

Notice of Allowability

Application No.

10/625,943

Examiner

Frantz B. Jean

Applicant(s)

RUSTAD ET AL.

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the request for considertaion filed on 11/12/07.
2. ☒ The allowed claim(s) is/are 1,3-18,20-22 and 24-29.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


FRANTZ B. JEAN
PRIMARY EXAMINER

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Stuart P. Meyer on 11/26/07 and 12/13/07.

The application has been amended as follows:

The following changes to the drawings have been approved by the examiner and agreed upon by applicant: figure 1 must be labeled "Prior Art". In order to avoid abandonment of the application, applicant must make these above agreed upon drawing changes.

Claim 1, after periodic requests to, please delete "a node on the network", then add --an identified closed port at a remote network node--; after a latency curve generator that calculates a, please add --continuous--.

Please cancel claims 2, 19 and 23.

Claim 10, after periodic requests to, please delete "a network node", then add --an identified closed port at a remote network node--; after denied by the, please add --remote--; after a latency trace generation module that calculates, please add --continuous--.

Claim 18, after periodic requests to, please add-an identified closed port at a remote--; after "timing information for the received responses;" please delete "and"; after

application data packets, please delete "responses.", then add --; and calculating in the single network node a continuous latency curve based upon the calculated latency data for the network.--.

Claim 25, after periodic requests to, please add-an identified closed port at--; after generating at the single network node a, please add --continuous--; after latency curve based upon the, please add--calculated--.

Claim 29, after "calculating a latency trace ... application data packets and the", please add --continuous--.

The affidavit filed on 11/12/07 has been considered by the examiner and has been placed in the file.

Claims 1, 3-18, 20-22 and 24-29 are allowed over the prior art of record and in light of applicants' arguments.

The following is an examiner's statement of reasons for allowance: The prior art fail to disclose as a whole a single active agent configured to transmit requests and receive responses to the requests to generate a single trace file, the single active agent further comprises an active request generator that generate periodic requests to an identified closed port at a remote network node; an active request log that stores request timing information regarding the timing of the periodic requests generated by the active request generator and a latency curve generator that calculates a continuous latency curve based on the request timing information and the response timing


information. All the limitations in combination with other limitations of the independent and dependent claims were not suggested and disclosed by the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


FRANTZ B. JEAN
PRIMARY EXAMINER